IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No. 688 of 2001
(Old No. 4087 of 1994)

Kamendra Singh S/o Sri Phool Singh
R/o Indra Bhawan
Near Kelton English School
Majhola Road, Line Par, Moradabad
At present working as
Additional District Cooperative Officer
Jyotiba Phule Nagar (U.P.) .....Applicant

Vs

State of Uttaranchal .....Opp. Party

Sri R.S. Sammal, learned counsel for the petitioner
Learned A.G.A. for the State.

Hon'ble B.C. Kandpal, J.

This petition under Section 482 Cr.P.C. has been filed by the petitioner – Kamendra Singh who was the Secretary, D.C.D.F. at the time of the occurrence for quashing the proceedings in Case No. 2 of 1994 arising out of Case Crime No. 668 of 1992, under Section 3/7 Essential Commodities Act.

2. Brief facts of the case are that a First Information Report was lodged at Police Station Kotdwar on 17.12.1992 alleging therein that during the course of the inspection of M/s D.C.D.F., kerosene oil wholesale dealer, Kotdwar, it reveals that on 19.10.1991 one tanker of kerosene oil was received by the said firm and after making fake cash memos in the name of different retail kerosene oil dealers i.e. fair price shops, the firms sold the entire oil in the black market. It was also alleged in the report that the cash memos were issued by Janki Ballabh Bhatt, in-charge of kerosene oil and Transport Department, M/s D.C.D.F., Kotdwar. The first Information Report has been annexed as Annexure- 1 to this petition.

3. After investigation of the matter, the chargesheet was submitted against the petitioner on 20.01.1994 and he was summoned by the trial concerned to face the trial.

4. Heard Sri R.S. Sammal, learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

5. The record reveals that the incident is alleged to have been taken place on 19.10.1991 while the First Information Report has been lodged after a considered delay i.e. on 17.12.1992, therefore, there is a delay of more than one year which is still unexplained. The record further reveals that the Departmental Enquiry was initiated against the petitioner and his integrity was witheld as well as an adverse entry was also awarded against him. But the entry with regard to the integrity as well as adverse entry was revoked subsequently, as is evident from Annexure – 5 of supplimentary affidavit filed by the petitioner.

6. It is pertinent to mention here that no counter affidavit has been filed on behalf of the State even after a lapse of more than 12 years.

7. Another supplementary affidavit has been filed by the petitioner by which the Minutes of Meeting of the Executive Body of the Cooperative Federation has been annexed as Annexure – 1 (A) and it reveals that the petitioner Kamendra Singh was assigned the duty of maintaining the record of the Cooperative Federation as well as look after the treasury and post office money transactions.

8. It is quite clear that the petitioner was not the in-charge of the conduct of business pertaining to the kerosene oil. The prosecution against the petitioner has been launched only on the basis of that he was the Secretary of the Cooperative Federation at the time of the occurrence, but this is not sufficient for establishing a particular charge against the accused.

9. The prosecution has to show in a positive manner that the petitioner was the in-charge of the conduct of business of the Cooperative Federation. It is also evident from the statement of Dalip Singh Rana who was appointed as Enquiry Officer in the matter as his statement has been annexed along with the supplementary affidavit dated 06.06.2006, filed by the petitioner. The statement of Dalip Singh Rana reveals that in the preliminary enquiry, no involvement of the petitioner was found. This report indicates only that the petitioner was the Secretary and the licence of the firm is in the Secretary, therefore, the prosecution was launched against him.

11. On the basis of the assessment of the documents filed before me at this stage, I am of the view that the petitioner cannot be held guilty for committing the breach of any regulation under the Essential Commodities Act. The petitioner was, of course, Secretary Commodities Act. The petitioner was, of course, Secretary of the Federation but he cannot be said to be the in-charge of the conduct of business pertaining to kerosene oil, in view of the duty assigned to him by way of the minutes of the Executive Body Meeting dated 03.05.1991.

12. Having considered the aforesaid facts and circumstances, I am of the view that the entire criminal

proceedings in Case No. 2 of 1994 arising out of Case Crime No. 668 of 1992, under Section 3/ 7 Essential Commodities Act is liable to be quashed.

13. Accordingly, the petition under Section 482 Cr. P.C. filed by the petitioner is allowed. The criminal proceedings in Case No. 2 of 1994 arising out of Case Crime No. 668 of 1992, under Section 3/7 Essential Commodities Act is hereby quashed.

(B.C. Kandpal, J.)

02.08.2006
ASWAL